

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

**In re:**

**FELT MANUFACTURING COMPANY, INC.**  
**(f/k/a Foss Manufacturing Company, Inc.),**  
  
**Debtor.**

**Chapter 11**

**Case No. 05-13724-JMD**

**TRUSTEE’S MOTION TO AUTHORIZE SALE OF INSURANCE POLICIES  
FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS OR, IN THE  
ALTERNATIVE, TO SURRENDER INSURANCE POLICIES FOR VALUE**

Patrick J. O’Malley (the “Trustee”), the Chapter 11 trustee of Felt Manufacturing Company, Inc. (the “Debtor”), hereby moves this Court, pursuant to Section 363 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 6004(c) and NHLBR 6004-1, for the entry of an order authorizing the Trustee to sell the Debtor’s interest in four (4) insurance policies (collectively the “Policies”), or, in the alternative, authorizing the Trustee to surrender the Policies to the policy issuers for their cash value. The Trustee requests the authority to surrender the Policies only in the event that he does not receive an offer higher and better than the surrender value of the Policies. In further support of this Motion, the Trustee submits as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue in this district is proper pursuant to 28 U.S.C. § 1409(a).

3. The statutory predicates for the relief sought in this motion are Sections 105(a) and 363 of the Bankruptcy Code.

## **II. BACKGROUND**

4. On September 16, 2005 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire (the “Court”).

5. On October 24, 2005, the Debtor filed a motion to appoint a trustee. The Court granted the motion on October 25, 2005 and approved the Trustee’s appointment on October 28, 2005.

6. The Debtor was a manufacturer of engineered fibers and specialty fiber solutions. It manufactured non-woven fibers for the automotive, craft, and original export manufacturer market. Its products and services were sold to a broad range of domestic and foreign manufacturers and original equipment manufactures in a variety of industries.

7. On April 7, 2006, the Trustee filed the Trustee’s Motion (A) to Authorize Trustee to Effectuate Asset Purchase Agreement; (B) to Authorize Sale of All or Substantially All of the Debtor’s Assets by Private Sale Free and Clear of Liens, Claims and Interests; and (C) for Related Relief (the “Sale Motion”).

8. The Court granted the Sale Motion on May 1, 2006 (the “Sale Order”) and the sale was consummated on May 5, 2006.

9. The Policies insure the life of Stephen Foss. The Policies had the following surrender values (collectively the “Surrender Values”) as of the indicated dates:

<u>Policy</u>	<u>Surrender Value of Policy</u>	<u>Date of Information</u>	<u>Death Benefit / Face Amount of Policy</u>
Jefferson Pilot (the “Jefferson Pilot Policy”)	\$58,442.21	4/14/2006	1,026,348.78
MetLife (the “MetLife Policy”)	\$0.00 <sup>1</sup>	3/18/2006	20,000.00
UNUM Life (the “UNUM Policy”)	\$56,400.00	2/17/2006	100,000.00
Minnesota Life (the “Minnesota Policy”)	\$47,496.45	10/2/2004	462,764.00
<b>Total Surrender Value</b>	<b>\$162,338.66</b>		<b>\$1,609,112.78</b>

10. The Policies were excluded from the assets sold pursuant to the Sale Order and remain assets of the Estate. The Pension Benefit Guaranty Corporation may hold a claim against the Policies.

### **III. REQUEST FOR RELIEF**

11. Pursuant to Section 363(f) of the Bankruptcy Code, the Trustee requests the authority to sell the Policies free and clear of all liens, claims and interests.

12. The Bankruptcy Code requires court approval for the use, sale or lease of the Estate’s assets outside the ordinary course of business. *See* 11 U.S.C. § 363. In pertinent part, Section 363(b)(1) provides that a “trustee, after notice and a hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1).

13. Courts approve a sale of a debtor’s assets if the proposed transaction represents the exercise of reasonable business judgment on the part of the Trustee. *See In re Martin*, 91 F.3d 389, 396 (3d Cir. 1996); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *see also Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Thomas McKinnon*

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<sup>1</sup> The cash surrender value of the MetLife Policy is currently estimated at \$0.00. Absent bids for the MetLife Policy, the Trustee shall surrender this policy and receive the then current value, if any.

*Securities, Inc.*, 120 B.R 301 (Bankr. S.D.N.Y. 1990); *In re Coastal Indus., Inc.*, 63 B.R 361,367 (Bankr. N.D. Ohio 1986); *In re Baldwin United Corp.*, 43 B.R 888 (Bankr. S.D. Ohio 1984).

14. The Trustee has performed an initial investigation into the possible sale of the Policies and has identified various parties who are in the business of purchasing life insurance policies (collectively the “Insurance Buyers”). A list of the Insurance Buyers is attached as Exhibit A. The value and marketability of the Policies will depend on, among other things, the age of the insured, the medical condition of the insured and the availability of the insured’s medical records.

15. The Trustee proposes to solicit offers to purchase the Policies, in accordance with the procedures described below, by sending a notice of sale in the form attached as Exhibit B to the Insurance Buyers, the Committee and all parties who requested notice under the applicable rules of bankruptcy procedure.

16. The Trustee requests the authority to sell the Policies to the party submitting the highest and best offer, or, in the event that the then current Surrender Values exceed the highest and best offer, to surrender the Policies for the then current Surrender Values. In the event that one or more substantially similar bids are submitted, the Trustee will conduct an auction and sell the Policies in question to the party that submits, in the Trustee’s discretion, the highest and best offer at the auction.

17. The Policies are an asset of the Debtor’s bankruptcy estate and have sufficient value to warrant their administration. The sale or surrender of the Policies is therefore in the best interest of the Estate and its creditors, and approval of the Sale is warranted. *See In re Martin*, 91 F.3d 389, 396; *In re Lionel Corp.*, 722 F.2d 1063, 1070.

18. In the course of the proposed solicitation and sale process, interested bidders may request information regarding the health of the insured, Stephen Foss. Due to restrictions on the disclosure of medical information, the Trustee is only able to disclose non-private information regarding Mr. Foss's health and medical history.

### **PROPOSED SALE PROCEDURES**

19. Like the sale of structured settlements and personal injury annuities, life insurance policies are sold in a specialized national market with a limited number of participants. Since the Policies have known surrender values, the amount of the minimum acceptable bid for one or more of the Policies is easily determined. As long as the Policies are sold for more than the current Surrender Values, there is no risk that the Estate is not receiving a fair price for the Policies.

20. Accordingly, the Trustee submits that the following bid procedures will realize the maximum value for the Policies while limiting the cost to the Estate:

- (a) A bid may make an offer to purchase all of the Policies (an "Entirety Bid") or any specified Policy (a "Single Policy Bid");
- (b) A bid must acknowledge in writing that the Policies are being sold as is, where is, without representation or warranty by the Trustee;
- (c) The bid may not be contingent upon obtaining financing, on the outcome of unperformed due diligence, or on other conditions to closing other than the entry of an order approving the Sale Motion;
- (d) The bid may not be contingent on the amount of the Surrender Value of the Policies as of the date of the closing;
- (e) The bid may not request or entitle the bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment;
- (f) The Trustee shall determine the updated Surrender Values seven (7) days prior to the Bid Deadline (as defined below), and it shall be the responsibility of the potential bidders to contact the Trustee to receive the updated Surrender Values;

- (g) The bid must be received by September 22, 2006 (the “Bid Deadline”), must include the amount being offered for the Policies, and expressly state that the offer of the party submitting the bid is irrevocable until 20 days after the sale date;
- (h) The bid, along with the required deposit, must be delivered on or before the Bid Deadline to Patrick J. O’Malley, Chapter 11 Trustee, c/o Hanify & King, P.C., Attention: Harold B. Murphy, Esq., One Beacon Street, Boston, MA 02108, telephone no. (617) 423-0400; fax no. (617) 556-8985; email hbm@hanify.com;
- (i) An Entirety Bid must provide for total consideration equal to five percent (5%) in excess of the then current aggregate Surrender Values. A Single Policy Bid must provide for total consideration equal to five percent (5%) in excess of the then current Surrender Value for the policy in question;
- (j) Each bidder must acknowledge in the bid that the Surrender Values are subject to change and that the Trustee may schedule the closing of the sale of the Policies;
- (k) Each bidder must provide written evidence of an ability to consummate the transaction; and
- (l) In the event that one or more substantially similar bids are submitted, the Trustee will conduct an auction on September 27, 2006 at the offices of his counsel, Hanify & King, P.C., One Beacon Street, Boston, Massachusetts, 02108. The procedures for the auction will be established by the Trustee and announced prior to the auction. The Trustee will determine, in his sole discretion, the highest and best offer submitted at any such auction.

21. Attached as Exhibit B is a proposed notice of sale (the “Notice of Sale”) that contains sufficient information for creditors and parties in interest to respond to the Sale Motion.

22. The Trustee requests that the Court approve the procedures for the sale of the Policies set forth above and approve the form of the Notice of Sale.

## **V. NOTICE**

23. The Trustee will serve this motion and the Notice of Sale on the United States Trustee, the Debtor, CapitalSource, the Coastal Economic Development Corporation, the Pension Benefit Guaranty Corporation, the Committee and all parties having filed a notice of

appearance in the above captioned case. The Trustee will serve the Notice of Sale on the Insurance Buyers and on any other party identified by the entities served with the Sale Motion.

24. Pursuant to NHLBR 6004-1, the Trustee requests that this Court require any and all objections to this motion to be filed and served upon the undersigned counsel within twenty (20) days of the date of this motion. The Trustee submits that such service is appropriate given the nature of the relief requested in this motion.

WHEREFORE, the Trustee respectfully requests that the Court enter an order, substantially in the form attached as Exhibit C:

- (a) Approving this motion;
- (b) Approving the Notice of Sale;
- (c) Authorizing the Trustee to sell the Policies as described in this motion;
- (d) Approving the manner of service described in this motion; and
- (e) Granting such other relief as this Court deems proper.

Respectfully Submitted,

Patrick J. O'Malley, as Chapter 11 Trustee of Felt  
Manufacturing Company, Inc.,  
By his counsel,

/s/ Harold B. Murphy  
Harold B. Murphy  
Charles R. Bennett, Jr.  
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Dated: August 28, 2006

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